Council of the European Union

Brussels, 27 February 2023
(OR. en)

15874/22
ADD 3

Interinstitutional File:
2022/0404 (COD)

EF 373
ECOFIN 1308
SURE 31
CODEC 1977

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 December 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SEC(2022) 697
Subject:	Regulatory Scrutiny Board Opinion Emir Targeted Review

Delegations will find attached document SEC(2022) 697.

EUROPEAN COMMISSION

16.9.2022

SEC(2022) 697

REGULATORY SCRUTINY BOARD OPINION

EMIR Targeted review

{COM(2022) 697-698}

{SWD(2022) 697-698}

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: EMIR Targeted review

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

The European Market Infrastructure Regulation (EMIR) aims at reducing systemic financial risk related to trading and clearing derivatives. Central counterparties (CCPs) place themselves between the seller and buyer in the market and handle positions, including the calculation of net obligations (netting), which ensures that financial guarantees/collateral is available to secure exposures.

The United Kingdom is the main location for clearing euro-denominated derivatives, with a market share of more than 90%. The European Central Bank (ECB) and European Securities and Markets Authority (ESMA) has identified exposure to systemic clearing as a significant financial stability risk for the EU. The UK systemic actors are now outside the EU, but benefit form an equivalence decision that expires in June 2025.

This initiative aims at amending EMIR to mitigate EU financial stability risks by reducing the overreliance on third country CCPs, by making EU CCPs more attractive and enhancing supervision of cross border risks.

(B) Summary of findings

The Board notes the additional information provided in advance of the meeting and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report does not clearly explain what success would look like and how it will be effectively monitored.

(2) The range of options considered is not comprehensive.

(3) The report does not sufficiently bring out the rationale behind, and envisaged design of, key measures to be dealt with through implementing regulation. It is not clear enough on the criteria and parameters that will frame their development.

This opinion concerns a draft impact assessment which may differ from the final version.

(C) What to improve

(1) The report should be clearer on the problem definition. It should more explicitly describe, and substantiate with evidence, how the financial stability risk of the EU differs to the risk that other global actors face. It should better explain the risk for the EU of depending to such a large extent on clearing activities subject to regulation and supervision by another jusrisdiction as well as its importance in terms of strategic autonomy. It should also better discuss the risks and trade-offs related to a CCP market shift towards the EU, such as market fragmentation, EU capacity built-up or potential concentration within the EU. Lastly, the main report should clarify (with details in the annex) what previous evaluations back up the EMIR targeted review and how the 'evaluate first' principle will be respected.

(2) The report should give a more detailed idea of what success would look like for this initiative. For example, it should provide an indication of how much clearing activity would need to be carried out by EU CCPs for the initiative to fulfil its objectives. It should clarify possible benchmarks for fostering the build-up of a credible clearing alternative within the EU and better explain the envisaged (cross-sectoral) monitoring framework. It should express the objectives in more specific terms.

(3) The report should be clearer on the full range of options considered. It should explain (if only in the discarded option section) why certain options (such as global coordination or a extension of equivalence) have not been considered at this stage.

(4) The report should better present the envisaged implementing framework and the reasoning behind it. The envisaged allocation of responsibilities between (level 1) basic legislation, (level 2) implementing regulation and related ESMA powers (e.g. Regulatory Technical Standards) should be sufficiently clear. The report should present the criteria and parameters that will frame the development and application of the implementing and ESMA supervisory framework (e.g. methodology for calculation of and minimum level of activity). Furthermore, the report should, to the greatest extent possible, outline the impact of the measures that can be taken now, and describe how further impact, cost-benefit and proportionality analysis will be provided for in the (level 2) implementing regulation. Finally, the report should be clear on the envisaged (legal) delivery instrument(s) for the measures under the preferred option.

(5) The report should more clearly outline the scale and consequences of the expected short to mid-tem costs on market participants. It should discuss how big the risk of unintended consequences (including on trade) is and how these could be mitigated. It also should more consistently present and distinguish between administrative and adjustment costs (and cost savings). It should better assess the synergetic effect between complementary measures and better justify the proportionality of the preferred option.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion
The DG must revise the report in accordance with the Board's findings before launching the interservice consultation. **If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.**

Full title	EMIR Targeted review Commission proposal for a Regulation amending Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR)
Reference number	PLAN/2022/6
Submitted to RSB on	20/07/2022
Date of RSB meeting	14/09/2022

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

1. **Summary of costs and benefits**

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
	Direct benefits	
Compliance costs reductions	Ongoing reduction of compliance costs for CCPs: total ongoing cost reduction of ca. EUR 3 million to ca. EUR 13 million (assuming 10 Article 15 or 49 procedures per year for all EU CCPs) with the following breakdown: • Reduction of costs related to legal opinions: potential saving between EUR 10 000 and EUR 250 000 (depending on the procedure and the fees charged) per procedure. • Reduction of costs of external consultants for an art. 15 or 49 procedure: savings between EUR 200 000 and EUR 350 000 per procedure. • Reduction of costs of hiring staff for these procedures (assuming a 1-year contract): savings of approx. EUR 1 300 per day over 1 year. • Reduction of staff needed for a given procedure: approx. 1.6 FTEs for a given procedure over 1 year, costing approximately EUR 300 000.	This benefit stems from the simplified approval procedures and replacement of ex-ante approval by ex-post approval for some changes. Standardised documents and greater clarity on what needs to be submitted will require less substantive and legal work. Greater clarity is also expected limit the needed interaction with supervisors (i.e. currently duplicative and contradicting rules and requests).
Improved capacity for oversight and management of financial stability risks and supervisory capacity of ESMA, central banks of issue and national supervisors	No estimate available.	Due to enhanced and more efficient cooperation between ESMA, central banks of issue and national supervisors, supervisors will be able to better monitor relevant financial stability risks. Notably, clarification of roles of different supervisory entities, reduction of duplications and improved knowledge sharing and more frequent cooperation will contribute to this effect together with greater clarity as to minor vs major changes in activities and models efficiencies. Central banks and ESMA would benefit from having a clearer overview on EU CCPs and

		relevant financial stability risks, which is important for their role.
	Indirect benefits	
Lower financial stability risks	Societal benefit. No estimate available.	A positive impact on financial stability is expected to arise (i) by reducing concentration rates and over-reliance on non-EU CCPs (ii) reducing frictional costs in case of developments or problems with a third-country CCP which would require a massive shift of positions towards EU CCPs, and (iii) by ensuring that EU supervisors are given adequate powers and monitoring capabilities.
Benefits for the single market of enhanced supervisory cooperation and convergence	Societal benefit. No estimate available.	Strengthened role for EU authorities in the supervisory framework and streamlined cooperation. Ongoing benefits in terms of higher supervisory standards for CCPs and financial stability
Enhanced offer possibilities for EU CCPs and reduced opportunity costs. Market participants benefit from increased competition between EU and third-country CCPs and greater clarity	The opportunity costs associated with long and burdensome procedures are difficult to estimate but translate into lost business, impact on the CCP's reputation (loss of credibility) and missed revenues. Stakeholder feedback points at complex and unclear supervisory requirements as a significant hurdle to bringing new products to the market and thus the attractiveness of EU CCPs, hence the impact of their removal is likely moderate to large.	Faster and clearer procedures for launching new products and changing risk models are expected to result in an ongoing increase in EU CCPs' capacity to bring new products to the market and change risk models. This should lead to greater choice for market participants (e.g. more CCPs to choose from to clear specific derivatives). Greater clarity for market participants from standardised documents and shorter time for supervisors to approve changes. Cost savings for EU CCPs may also be potentially passed on to clearing members and clients.
More opportunities for clearing members and clients	No estimate available, depending on market developments and choices of EU CCPs regarding launch of new products.	This initiative will enable EU CCPs to bring more products to the market and make their product offer more attractive, and will encourage EU clearing members and clients to clear with EU CCPs. Clearing members and clients are thus expected to have more choices for clearing their trades and can potentially benefit from increased competition.
	Administrative cost savings related to the 'one in, one out' approach*	
Compliance cost reductions (described above)	In total, approximately EUR 3-13 million EUR per year (described above)	As described above. These cost savings relate to a simplification of administrative obligations at EU level (of existing EMIR rules) and hence all related reductions in expenses count under "one in, one out".

II. Overview of costs – Preferred option							
		Businesses – EU CCPs		**Businesses – EU clearing members and clients**		**Administrations (supervisors, ESMA)**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
Supply-side measures	Direct adjustment costs	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	Moderate cost of setting up new IT tools	Operating new IT tools; less time to assess proposed actions
	Direct administrative costs	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
	Direct regulatory fees and charges	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
	Direct enforcement costs	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
	Indirect costs	No cost impact identified	Costs of setting up and operating new IT tools by supervisors may be reflected in increased supervision fees[1]	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
Demand-side measures	Direct adjustment costs	No cost impact identified	No cost impact identified	Costs for clearing members and clients to reduce excessive exposures or increase capital to meet higher requirements (depending on the precise calibration and their choices[2])	Depending on the precise calibration and choice of individual companies[3], there would be higher costs of clearing (e.g. loss of netting benefits)[4] and/or, opportunity costs of holding	No cost impact identified	No cost impact identified

[1] But potential savings from streamlined cooperation would have an opposite effect which would (partially or even fully) mitigate this.

[2] Magnitude of these costs cannot be reliably assessed as they depend on the precise calibration of the measures which will be established through delegated/implementing acts (which will consider cost

					higher capital to meet requirements for non-EU CCP exposures.		
	Direct administrative costs	No cost impact identified	No cost impact identified	Paperwork related to opening an account (expected to be negligible)[5]	No cost impact identified	No cost impact identified	No cost impact identified
	Direct regulatory fees and charges	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
	Direct enforcement costs	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
	Indirect costs	No cost impact identified	Possible costs of reporting on more accounts (expected to be negligible)	No cost impact identified	Clients may face a small increase in clearing fees when the clearing member maintains multiple accounts[6]	No cost impact identified	More enforcement may be needed as EU business volumes grow
Supervision	Direct adjustment costs	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	Modification of procedures and tools to the new supervisory cooperation framework	Resource implications of cooperation in joint supervisory teams and to the joint cross-border monitoring system (e.g. staff, meetings)

implications to the degree possible) and on choices of companies. Hence it cannot be determined upfront and is likely to vary by company depending on its specific situation.

3 Magnitude of these costs cannot be reliably assessed as they depend on the precise calibration of the measures which will be established through delegated/implementing acts (which will consider cost implications to the degree possible) and on choices of companies. Hence it cannot be determined upfront and is likely to vary by company depending on its specific situation.

4 Expected to be partially mitigated over the medium to long term by market adaptation

5 As some clearing participants (e.g. clients) that do not already have an account at an EU CCP will have to open one.

6 These costs are expected to decrease over time as the market adapts to the new situation by moving positions.

	Direct administrative costs	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	Additional paperwork related to modificati on of tools and procedures (likely low)	Additional paperwork related to enhanced cooperation
	Direct regulatory fees and charges	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
	Direct enforcement costs	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
	Indirect costs	No cost impact identified	Increased costs of supervision may be passed on to CCPs via increased supervision fees	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs	No cost impact identified	No cost impact identified	.			
	Indirect adjustment costs	No cost impact identified	Increased costs of supervision may be passed on CCPs via increased supervision fees	No cost impact identified	Clients may face an increase in clearing fees when the clearing member maintains multiple accounts.[7]		
	Administrative costs (for offsetting)	No cost impact identified	No cost impact identified	Paperwork related to opening an account (expected to be negligible)[8]	No cost impact identified		

[7] These costs are expected to decrease over time as the market adapts to the new situation by moving positions.
[8] As some clearing participants (e.g. clients) that do not already have an account at an EU CCP will have to open one.